

KNOW YOUR RIGHTS!

A pamphlet series by American Federation of Teachers Local 1904

Intellectual Property Rights of AFT Employees at Montclair State University



Intellectual property rights of AFT employees at Montclair State University are governed by the following laws, contracts, and regulations:¹

1. New Jersey Administrative Code 19:61-6.4(d) and 19:61-6.5(b)
2. The State of New Jersey Ethics Commission's "Annual College and University Disclosure Form Instructions"
3. The Collective Negotiations Agreement between the State of New Jersey and the Council of New Jersey State College Locals, AFT, AFL-CIO
4. The Agreement of Online Course Development between the University and the Local
5. The Policy on Patents and Inventions negotiated by the University and the Local

What is "intellectual property"?

Intellectual Property (IP) is a legal term that covers things created by the mind, such as written works, art, musical scores, documented research, and inventions. It also includes names, symbols, and images used in business. To protect the rights to control and profit from intellectual property, people often register copyrights, and/or apply for patents, and trademarks.

¹ Note: To date, the Local Selected Procedures Agreement has no provisions relevant to intellectual property.

Who owns the intellectual property rights to works I created?

In general, employees represented by AFT Local 1904 at Montclair State University retain all intellectual property rights to works that they create, unless the University and the Local Union have negotiated a contract stating otherwise. The University is not allowed to negotiate such contracts directly with employees. That is the gist of Article XXXIII of the Collective Negotiations Agreement:

INTELLECTUAL PROPERTY AND SCHOLARLY WORKS

Intellectual property and scholarly works shall be negotiated locally in accordance with the New Jersey Employer-Employee Relations Act and its governing regulations provided that no College/University shall impose any negotiable terms and conditioning without exhausting PERC's impasse procedures. Notwithstanding any language in this Agreement to the contrary and for purposes of this provision only, matters of compensation set forth in a local agreement once negotiated or imposed pursuant to this Article, regarding intellectual property and scholarly works, shall be enforceable through binding arbitration and subject to the provisions under Article VII. Nothing contained herein shall in any way affect the terms and/or continued application of any locally negotiated agreement.

In the absence of such a locally-negotiated agreement, any intellectual property created by an AFT employee belongs to the employee, who is entitled to profit from it financially—even if (1) those works were created using employee resources such as an office, computer, Internet services, library facilities, and office equipment, and/or while on sabbatical, and (2) those works were created specifically for use in university courses and workshops. However, employees may not profit from materials they require students to purchase (see below).

Has Montclair State University negotiated any agreements to acquire rights to intellectual property produced by AFT employees?

Yes, the University and the Local Union have negotiated two such agreements: one for materials for online courses, and another for patents.

Agreement of Online Course Development

According to the Agreement of Online Course Development, the University can pay an AFT member as a subject matter expert to help design and develop materials for a fully online course. The amount of compensation is \$5,000 per course and the intellectual property rights for that work belong to the University—meaning that the University may hire others to teach the course and use those materials. *Apart from this, AFT members retain the rights to any*

*intellectual property they created for use in university courses they teach and workshops they conduct. [The full text of this Agreement is available on the Local's website here.](#)*²

Policy on Patents and Inventions

The Policy on Patents and Inventions negotiated by the University and the Local union covers intellectual property rights in “inventions” such as machines, drugs, chemical compounds, software, or even new life forms. Intellectual property rights to inventions are protected by patents, which prevent others from making the invention without paying the inventor a royalty.

According to our locally-negotiated Policy, the University owns the intellectual property rights for any “inventions” made by AFT employees under four conditions:

- (i) If the University contracted with the employee to invent it;
- (ii) If the University contracted with a third party to fund or sponsor the employee’s research that resulted in the invention;
- (iii) If the invention resulted from work in the employee’s job description; and
- (iv) If the employee created the invention with the use of University facilities or financial support.

However, any revenue obtained from the use of inventions created under one more of these conditions will be shared by the University and the employee as follows:

First \$10,000: 100% to the employee
\$10,001 - \$500,000: 50% to the employee
\$500,001 and above: 30% to the employee.

[The full text of the negotiated Policy on Patents and Inventions is available on the Local's website here.](#)

How can I protect my ownership rights to intellectual property I have created that is not covered by either of these Agreements?

There is nothing you need to do to protect your intellectual property rights against the University. But depending on what kind of property you have created, it may be in your interest to register a

² This agreement is authorized by Article XXXIV of our Collective Negotiations Agreement, which provides: “Online courses shall be negotiated locally in accordance with the New Jersey Employer-Employee Relations Act and its governing regulations, provided that no College/University shall impose any negotiable terms and conditions without exhausting PERC’s Impasse procedures. Notwithstanding any language in this Agreement to the contrary and for purposes of this provision only, matters of compensation set forth in a local agreement negotiated or imposed pursuant to this Article, regarding online courses, shall be enforceable through binding arbitration and subject to the provisions under Article VII. Nothing contained herein shall in any way affect the terms and/or continued application of any locally negotiated agreement.”

copyright, patent, or trademark and to hire an attorney who specializes in intellectual property to assist you with, and advise you about this.

Apart from these Agreements, am I entitled to keep revenue generated from my intellectual property?

Yes. The State of New Jersey Ethics Commission interprets the applicable laws to mean that state employees serving in a “scholarly capacity” – meaning the performance of “any pedagogical, academic, artistic, educational or scholarly activity for the University” – are entitled to financial benefits resulting from that work, including publications royalties, honoraria, academic prizes, and travel and subsistence expenses. In addition, state employees do not need approval from the University to publish in a scholarly capacity. *However, you must report these benefits on the Annual College and University Disclosure Form in Workday. [The full text of the Ethics Commission’s “Annual College and University Disclosure Form Instructions” is available online here.](#)*

Can I require my students to use a textbook or other materials I make money on?

Yes, you may assign a textbook or other materials for which you receive royalties, as long as any royalties due to you are donated elsewhere and records of the donation are submitted with your Annual College and University Disclosure Form in Workday. In addition, you may keep royalties from sales of a textbook you have co/written that is used in other classes at Montclair State, provided that you were not involved in the selection of the textbook for those classes. In short, you may not profit by assigning your text to your own students.

What if I have other questions about my intellectual property rights?

Contact your union officer representative ([find them here](#))!

For more background on intellectual property rights at New Jersey State Colleges and Universities, see the pamphlet [Copyright – When It’s Yours](#) published by the Council of New Jersey State College Locals.